



March 20, 2009

ENGROSSED HOUSE BILL No. 1292

DIGEST OF HB 1292 (Updated March 18, 2009 11:13 am - DI 104)

Citations Affected: IC 25-26; noncode.

Synopsis: Pharmacy record audits. Specifies requirements for the conduct of a pharmacy audit and the appeal of the results of a pharmacy audit. Specifies exceptions for the Medicaid program.

Effective: July 1, 2009.

Welch, Stilwell, Crouch, Avery

(SENATE SPONSORS — DILLON, SIMPSON)

January 13, 2009, read first time and referred to Committee on Public Health.
February 9, 2009, amended, reported — Do Pass.
February 12, 2009, read second time, ordered engrossed. Engrossed.
February 17, 2009, read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 19, 2009, read first time and referred to Committee on Health and Provider Services.
March 19, 2009, reported favorably — Do Pass.

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EH 1292—LS 7115/DI 97+



March 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1292

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 25-26-22 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]:

4 **Chapter 22. Pharmacy Audits**

5 **Sec. 1. The definitions contained in IC 25-26-13-2 apply**
6 **throughout this chapter.**

7 **Sec. 2. As used in this chapter, "audit" means an audit of a**
8 **pharmacy:**

9 **(1) on behalf of a third party payer; and**

10 **(2) related to a particular claim made by the pharmacy to the**
11 **third party payer.**

12 **Sec. 3. As used in this chapter, "extrapolation audit" means an**
13 **audit of a sample of claims submitted by a pharmacy to a third**
14 **party payer, the results of which are used to estimate audit results**
15 **for a larger group of unaudited claims submitted by the pharmacy**
16 **to the third party payer.**

17 **Sec. 4. An audit must be conducted in compliance with this**

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chapter.

Sec. 5. An auditor conducting an audit shall comply with all of the following:

(1) The contract under which the audit is performed must provide a description of audit procedures that will be followed.

(2) For an onsite audit conducted at a pharmacy's location, the auditor that conducts the audit shall provide written notice to the pharmacy at least two (2) weeks before the initial onsite audit is performed for each audit cycle.

(3) The auditor shall not interfere with the delivery of pharmacist services to a patient and shall use every effort to minimize inconvenience and disruption to pharmacy operations during the audit. This subdivision does not prohibit audits during normal business hours of the pharmacy.

(4) If the audit requires use of clinical or professional judgment, the audit must be conducted by or in consultation with a licensed pharmacist.

(5) The auditor shall allow the use of written or otherwise transmitted hospital, physician, or other health practitioner records to validate a pharmacy record with respect to a prescription for a legend drug.

(6) The auditor shall perform the audit according to the same standards and parameters that the auditor uses to audit all other similarly situated pharmacies on behalf of the third party payer.

(7) The period covered by the audit must not exceed twenty-four (24) months after the date on which the claim that is the subject of the audit was submitted to or adjudicated by the third party payer, and the pharmacy must be permitted to resubmit electronically any claims disputed by the audit. This subdivision does not limit the period for audits under the Medicaid program that are conducted due to a federal requirement.

(8) The audit must not be initiated or scheduled during the first five (5) calendar days of any month without the voluntary consent of the pharmacy. The consent may not be mandated by a contract or any other means.

(9) Payment to the on-site auditor for conducting the audit must not be based on a percentage of any amount recovered as a result of the audit.

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1 **Sec. 6. Following an audit, the auditor shall provide to the**
 2 **pharmacy written audit reports as follows:**

3 **(1) The auditor shall deliver a preliminary audit report to the**
 4 **pharmacy not later than ninety (90) days after the audit is**
 5 **concluded.**

6 **(2) The auditor shall provide with the preliminary audit**
 7 **report a written appeal procedure for the pharmacy to follow**
 8 **if the pharmacy desires to appeal a finding contained in the**
 9 **preliminary audit report.**

10 **(3) The auditor shall deliver a final audit report to the**
 11 **pharmacy not later than one hundred twenty (120) days after:**

12 **(A) the preliminary audit report is received by the**
 13 **pharmacy; or**

14 **(B) if an appeal is filed, a final appeal determination is**
 15 **made;**

16 **whichever is later.**

17 **(4) Each audit report must be signed by the auditor and a**
 18 **pharmacist participating in the audit.**

19 **(5) The auditor shall provide a copy of the final audit report**
 20 **to the third party payer.**

21 **Sec. 7. (a) A clerical error related to or contained in a document**
 22 **that is necessary to the conduct of an audit does not constitute**
 23 **fraud without proof of intent to commit fraud.**

24 **(b) A clerical error that results in inappropriate payment of a**
 25 **claim by the third party payer may result in recoupment of any**
 26 **inappropriately made payment.**

27 **Sec. 8. An audit finding of an overpayment or underpayment of**
 28 **a claim:**

29 **(1) must be based on an actual overpayment or**
 30 **underpayment; and**

31 **(2) may not be based on a projection that is based on the**
 32 **number of:**

33 **(A) patients who:**

34 **(i) have similar diagnoses; and**

35 **(ii) are served by the pharmacy; or**

36 **(B) prescriptions for or refills of similar legend drugs that**
 37 **are dispensed by the pharmacy.**

38 **Sec. 9. (a) A final audit report must first be distributed before**
 39 **recoupment of funds may be made based on an audit finding of**
 40 **overpayment or underpayment.**

41 **(b) Except for audits conducted under the Medicaid program,**
 42 **interest on funds described in subsection (a) does not accrue during**

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the audit period.

Sec. 10. The results of an extrapolation audit may not be used by an auditor as a basis for calculating overpayment or underpayment recoupments or penalties.

Sec. 11. This chapter does not apply to an investigative audit conducted for purposes of determining whether fraud, willful misrepresentation, or alleged serious abuse has occurred.

SECTION 2. [EFFECTIVE JULY 1, 2009] (a) IC 25-26-22, as added by this act, applies only to an audit related to pharmacy services that are provided after June 30, 2009.

(b) This SECTION expires June 30, 2014.

SECTION 3. [EFFECTIVE JULY 1, 2009] (a) Before November 1, 2009, the health finance commission (established by IC 2-5-23-3) shall study and make recommendations concerning the following:

(1) Whether pharmacy audits conducted under IC 25-26-22 (as added by this act) should provide for an independent third party appeal.

(2) If an independent third party audit is recommended, who should pay the costs for the audit.

(b) This SECTION expires December 1, 2009.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1292, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 5, delete "detailed".

Page 2, line 14, after "audit." insert "**This subdivision does not prohibit audits during normal business hours of the pharmacy.**".

Page 2, line 17, delete "pharmacist who is licensed under this article." and insert "**licensed pharmacist.**".

Page 2, line 26, delete "twelve" and insert "**twenty-four (24)**".

Page 2, line 27, delete "(12)".

Page 2, line 29, delete "payer." insert "**payer, and the pharmacy must be permitted to resubmit electronically any claims disputed by the audit. This subdivision does not limit the period for audits under the Medicaid program that are conducted due to a federal requirement.**".

Page 2, line 31, delete "seven (7)" and insert "**five (5)**".

Page 2, line 31, delete "month." and insert "**month without the voluntary consent of the pharmacy. The consent may not be mandated by a contract or any other means.**".

Page 2, line 32, before "auditor" insert "**on-site**".

Page 2, line 33, after "recovered" delete "by the".

Page 2, line 34, delete "third party payer".

Page 2, line 35, delete "(a)".

Page 3, line 2, delete ", including".

Page 3, delete line 3.

Page 3, line 4, delete "made by an independent third party under subsection (b),".

Page 3, run in lines 2 through 4.

Page 3, line 9, delete "filed under subsection (b), and insert "**filed,**".

Page 3, line 12, after "and" delete "each" and insert "**a**".

Page 3, delete lines 16 through 34.

Page 3, line 41, delete "(a)".

Page 4, delete lines 10 through 11.

Page 4, line 15, delete "Interest" and insert "**Except for audits conducted under the Medicaid program, interest**".

Page 4, line 21, delete "by or on behalf of a state agency".

Page 4, line 22, after "or" insert "**alleged serious**".

Page 4, after line 27, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2009] (a) **Before November**

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1, 2009, the health finance commission (established by IC 2-5-23-3) shall study and make recommendations concerning the following:

(1) Whether pharmacy audits conducted under IC 25-26-22 (as added by this act) should provide for an independent third party appeal.

(2) If an independent third party audit is recommended, who should pay the costs for the audit.

(b) This SECTION expires December 1, 2009."

and when so amended that said bill do pass.

(Reference is to HB 1292 as introduced.)

BROWN C, Chair

Committee Vote: yeas 9, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred House Bill No. 1292, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1292 as printed February 10, 2009.)

MILLER, Chairperson

Committee Vote: Yeas 9, Nays 0.

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